

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICHARD NICHOLSON,

Case No. 3:16-cv-00486-MMD-WGC

Petitioner,

ORDER

v.

RENEE BAKER, *et al.*,

Respondents.

Before the Court is Petitioner Richard Nicholson's Motion to Reopen Case. (ECF No. 59.)

On May 26, 2020, the Court administratively closed this action while Petitioner exhausted his unexhausted claims in state court. (ECF No. 58.) Petitioner has completed his state court proceedings and now moves to re-open these federal habeas proceedings. (ECF No. 59.) Respondents did not oppose this motion and the deadline to do so expired without request for extension.

Petitioner represents that the claim raised in state court is already included in his Amended Petition (ECF No. 38) and does not need to be supplemented unless the Court prefers one with updated procedural history and statement of exhaustion.

Accordingly, it is ordered that Petitioner's motion to reopen case (ECF No. 59) is granted.

It is further ordered that, as the stay is lifted by this Order, the Clerk of Court will reopen the file in this action.

It is further ordered that Petitioner has until March 29, 2021, to file and serve a second amended petition updating the procedural history and statement of exhaustion in the Amended Petition.

It is further ordered that Respondents will have 60 days to answer, or otherwise

1 respond to, the Amended Petition for writ of habeas corpus in this case.

2 It is further ordered that Petitioner will have 60 days following service of the answer
3 to file and serve a reply brief. If a dispositive motion is filed, the parties will brief the motion
4 in accordance with Rules 7-2 and 7-3 of the Local Rules of Practice.

5 It is further ordered that any procedural defenses Respondents raise to the second
6 Amended Petition must be raised together in a single consolidated motion to dismiss.
7 Procedural defenses omitted from such motion to dismiss will be subject to potential
8 waiver. Respondents will not file a response in this case that consolidates their procedural
9 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C.
10 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents do seek
11 dismissal of unexhausted claims under § 2254(b)(2), they must do so within the single
12 motion to dismiss, not in the answer, and specifically direct their argument to the standard
13 for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th
14 Cir. 2005). In short, no procedural defenses, including exhaustion, will be included with
15 the merits in an answer. All procedural defenses, including exhaustion, instead must be
16 raised by motion to dismiss.

17 It is further ordered that, in any answer filed on the merits, Respondents must
18 specifically cite to and address the applicable state court written decision and state court
19 record materials, if any, regarding each claim within the response as to that claim.

20 It is further ordered that any additional state court record and related exhibits must
21 be filed in accordance with LR IA 10-3, LR IC 2-2, and LSR 3-3, and include a separate
22 index identifying each additional exhibit by number or letter. The index must be filed in
23 CM/ECF's document upload screen as the base document to receive the base docket
24 number (ECF No. 10). Each exhibit will then be filed as "attachments" to the base
25 document—the index—to receive a sequenced sub-docket number (ECF Nos. 10-1; 10-
26 2; 10-3). If the exhibits will span more than one filing, the base document in each
27 successive filing must be either a copy of the index or volume cover page. See LR IC 2-
28 2(a)(3)(A).

1 Notwithstanding LR IC 2-2(g), paper copies of any electronically filed exhibits—for
2 this case—*need not* be provided to chambers or to the staff attorney, unless later directed
3 by the Court.

4 DATED THIS 15th Day of March 2021.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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